

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DERRICK LEE SMITH,

Petitioner,

v.

CASE NO.13-CV-13863
HONORABLE AVERN COHN

MARY BERGHUIS,

Respondent.

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ORDER DENYING MOTION FOR RECONSIDERATION (Doc. 7)

I.

This is a habeas case under 28 U.S.C. § 2254. On September 18, 2013, the Court dismissed the petition as duplicative to the habeas petition in Smith v. Ludwick, Case No. 10-CV-11052 (E.D. Mich. O'Meara, J.). See Doc. 6. The case before Judge O'Meara has been stayed and held in abeyance, but remains pending. Before the Court is Petitioner's motion for reconsideration of the dismissal. For the reasons that follow, the motion is DENIED.

II.

A motion for reconsideration which presents issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. Hence v. Smith, 49 F. Supp. 2d 547, 550 (E.D. Mich. 1999); Czajkowski v. Tindall & Assoc., P.C., 967 F. Supp. 951, 952 (E.D. Mich. 1997). Petitioner asserts that the Court erred in dismissing this case as duplicative because Judge's O'Meara's case has been stayed such that it is not currently "pending." Petitioner is mistaken. While Case No. 10-CV-11052 has been stayed and held in abeyance, it nonetheless remains as a pending

case before Judge O'Meara. To be sure, the docket for that case indicates that Petitioner has filed several motions to lift the stay, which are currently pending. Petitioner cannot proceed on two different habeas cases challenging the same state court convictions and the Court cannot bifurcate his claims. Petitioner has not met his burden of showing a palpable defect by which the Court has been misled or his burden of showing that a different disposition must result from a correction thereof, as required by Local Rule 7.1(h)(3). In short, the Court properly dismissed the petition as duplicative and reconsideration is not warranted.

No further papers should be filed in this matter.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: October 3, 2013

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, October 3, 2013, by electronic and/or ordinary mail.

S/Sakne Chami
Case Manager, (313) 234-5160